

**1:06cv275**

**Defendant.**

-1-

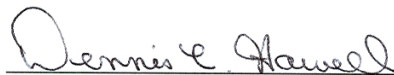
attorney's designation of a person under Rule 26 as an expert is no guarantee that such person will be called by the party at trial. Further, if a judge undertakes to determine the expertise of a witness well in advance of trial there is no guarantee that such judge will also be the trial judge.

If federal courts were to engage in the pretrial qualification of experts it would be a huge inefficiency, resulting in mini trials. At any given time, there are hundreds of cases pending in the Asheville/Bryson City divisions, and it would be impossible to provide the parties with the relief they seek without congesting the trial docket. Indeed, this action - - like 90 percent of all civil actions filed - - may not even make it to trial as indicated by the motion filed seven days before the instant motion was filed. The proper method for challenging an expert under Daubert is to file a Motion *In Limine* in close temporal proximity to the Final Pretrial Conference. Having considered the motion and reviewed the pleadings, the court enters the following Order.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that defendant's Motion *in Limine* (#38) is **DENIED** without prejudice as to reasserting such motion at or around the time of the Final Pretrial Conference.

Signed: May 22, 2007



Dennis L. Howell  
United States Magistrate Judge

